

No. 12-10048

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PENG XIANG LI,

Defendant-Appellant.

**UNITED STATES' UNOPPOSED MOTION FOR AN EXTENSION OF
TIME IN WHICH TO FILE ITS ANSWERING BRIEF**

Plaintiff-Appellee United States of America hereby moves this Court for a 30-day extension of time in which to file its answering brief in the above-entitled appeal. The government's brief is currently due on August 6, 2012. This motion would extend the time for filing the government's brief until September 5, 2012. This motion is made pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 31-2.2(b) and is based on the accompanying declaration of Assistant United States Attorney Susan B. Gray. Defendant-Appellant is currently in custody with a projected release date of April 2, 2017. Appellant's counsel has

been contacted with regard to this motion, and has no objection to this requested continuance.

DATED: July 30, 2012

Respectfully submitted,

MELINDA HAAG
United States Attorney

BARBARA J. VALLIERE
Chief, Appellate Division
Assistant United States Attorney

s/ Susan B. Gray
SUSAN B. GRAY
Assistant United States Attorney

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Attorneys for Respondent-Appellee
UNITED STATES OF AMERICA

No. 12-10048

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UNITED STATES OF AMERICA,

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v.

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DECLARATION OF SUSAN B. GRAY IN SUPPORT OF THE UNITED STATES' UNOPPOSED MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE ITS ANSWERING BRIEF

Pursuant to 28 U.S.C. § 1746, I, Susan B. Gray, hereby declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Northern District of California. I am assigned to prepare the government's answering brief as appellee in the above-captioned case.

2. Peng Xiang Li (hereinafter "defendant") filed his opening brief on July 5, 2012. He raises two issues on appeal: (1) whether the district court erred in denying defendant's motion to suppress evidence obtained through a wiretap; and (2) whether the district court erred in finding defendant did not qualify for "safety valve" consideration under United States Sentencing Guideline Section

3553(f)(5). He asks that the Court vacate his conviction or, alternatively, remand the case to the district court for re-sentencing.

3. The government's answering brief is due on August 6, 2012. I am requesting a 30-day extension in which to file the government's brief. The United States has not previously sought an extension of time in this case.

4. This requested continuance is not undertaken for purposes of delay. I was not the counsel handling this matter in the district court. The case was recently reassigned to me and I seek this 30-day extension to familiarize myself with the record and the issues raised on appeal. Additionally, I have not been able to work on the brief in the last three weeks because of my work on the government's response to an application to file a second or successive motion under 28 U.S.C. § 2255 in the case of *Lal Bhatia v. United States*, 12-70891, which is due on August 3, 2012. The case is particularly time consuming because Bhatai, who is *pro se*, filed no excerpt of record. The record below in that case is lengthy. *See* Nos. 06-10657, 07-72110, 07-15140, 08-15847, 08-15890, 08-17784, 09-17266, and 11-16250.

5. Appellant's counsel has been contacted with regard to this motion, and has no objection to this requested continuance.

6. To the best of my knowledge, the court reporter is not in default with regard to any designated transcripts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2012.

s/ Susan B. Gray
SUSAN B. GRAY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ TYLE L. DOERR
TYLE L. DOERR
Appellate Paralegal Specialist